# CD Kant Speech AC

This aff is an edited version of my Harvard aff. These justifications are all distillations of standard Kantian arguments, and many of them are lightly edited from Varun Bhave (you can find them on his circuitdebater). I omitted some arguments I neither wrote myself nor took from open-sourced documents, as well as all of the frontlines.

## 1AC

### Advocacy

#### I defend Resolved: Public colleges and universities in the United States ought not restrict any constitutionally protected speech. I’m open to modifications in CX. It’s unreciprocal for aff to meet an advocacy burden involving spec or fiat since neg has no stable advocacy for aff prep.

### FW

**The standard is willing consistently with freedom.** People are free when they act for purposes they set themselves rather than purposes set by others.

[omitted]

**Weighing:**

A. My theory outweighs on probability since other theories assume a will which already has certain ends attached.

B. Intentions outweighs foreseen harms—otherwise every effect would be included in an action; practical reasoning would be impossible because its scope would extend to every occurrence ever.

C. Intent-based frameworks are the only way to unify action. If I’m baking cookies, mixing ingredients, rolling dough and baking them in the oven are separate actions that are given meaning by their relation to the end—otherwise our actions are meaningless and random. You must provide another account of action to make a comparative response. Also preempts aggregation—action is infinitely divisible so there’s an infinite amount of freedom anyhow.

**MORE Reasons to Prefer:**

1. The only constraint on agency is non-contradiction—what is contradictory, like a round triangle, cannot be thought. Preempts aggregation since actions cannot result in more of a contradiction than other.

2. Solves skep. You can ask why into regress, but you can’t ask why reason because that’s a closed question. If I gave you a reason to act for reasons, I’d answer your question meaning you already do act for reasons. Means rational agency is transcendental condition for moral justification.

3. The AC should be a normative default. If you’re unsure what the good is, preserve freedom since it permits everyone to pursue their own conception of the good.

4. Other theories result in a regress—they generate requirements conditional on some further principle, which must itself be derived. The AC framework escapes this because it is derivable from the concept of an unconditional law in general. This means all neg frameworks implicitly rely on the AC framework to generate an obligation—the AC offense comes first and turns NCs.

5. Changing your environment doesn’t violate your freedom—if I buy the last jar of peanut butter I haven’t wronged you—means violations must stem from means you’re entitled to. Also, no one person can feel aggregative harms so aggregation is impossible.

6. The AC is the only way to make rights conclusive—a) empirical constraints such as the inability of two persons to occupy the same space and differing interests mean freedom is possible only under reciprocal constraints b) no particular will can hope to adjudicate conflicts between rights claims, only an omnilateral will can solve because it subsumes both parties.

7. Util impacts do not link—the most important feature of state action is rectifying violations of freedom, not instantiating any particular state of affairs. Also, induction fails since it presumes its validity in inferring from it.

8. Arguments that say another standard is a prerequisite concede that their framework is a means of achieving mine, not independently valuable, which means the debate should be evaluated under the AC contention. My immediate links from the contention also outweigh on directness of link.

9. [omitted – an abstraction bad preempt]

10. [omitted – a standpoint epistemology preempt]

11. Feminist theory requires a Kantian account of oppression in order to adequately explicate a duty to resist oppression. Varden[[1]](#footnote-1)

Chapter 2 sketches the Kantian moral account of the self that Hay uses in the remaining three chapters to develop her account of oppression. As she notes, developing a plausible feminist Kantian theory of the self is impossible without dealing with the objection that Kant says some seemingly really nasty things about women. Second, such an account must deal with classic feminist objections to Kant regarding the importance of our embodiment and social natures. These objections include that a moral account must take seriously how we are born dependent beings (not full, rational selves), how a human being needs a certain social setting (such as a caring family) to develop well, and how many of our most important relationships are fundamentally asymmetrical in nature. Hay summarizes Kant's alleged failure to address these issues as the result of his privileging "the rational over the animal" (50). Third, the account must deal with the objection originally made most famous by Bernard Williams, and later developed by many feminists, that a full moral account must recognize the importance of our emotions, especially those moral emotions enabled by particular loving and caring others. For example, when we save someone we love, we should save them simply because we love them and not (also) because it is morally permissible. Hay paraphrases this objection by saying that Kant allegedly privileges "the rational ov**er the emotional" (ibid.) Hay addresses these three objections to Kant in the following way. First, she argues it is simply true that Kant was no feminist. Against Pauline Kleingeld, however, she maintains that because his anti-feminist statements are rare and not as offensive in his moral works, we can simply set many of them (especially those found in his "peripheral works. . . . [e.g., his] Anthropology" (50-51)) aside. Instead, we can use a gender-neutral language when developing the considered Kantian moral position. Second, Hay maintains that** typical criticisms of Kant on issues of embodiment and our social natures are unfair. **She states:** there is nothing [in Kant's account] preventing a Kantian feminist from inserting a more robust account of our moral lives -- one that **addresses . . . [also] asymmetrical dependencies and the relationships in which they occur . . . . [or** applies**]** his framework to a more comprehensive**, inclusive, and diverse** account of the human condition. **(56) Finally, regarding the third type of objection, Hay emphasizes that on the Kantian account, there is nothing wrong with acting from emotions, such as out of love. "Our actions," she continues, "are usually overdetermined anyway" (59) and acting out of a motivation other than duty is morally permissible so long as one accepts that "reason must take precedence over emotion when the two are in conflict." (59) In sum, Hay doesn't think that any of the shortfalls of Kant's own theory holds back the Kantian project.** His sexism can be set aside, and the lack of attention to our **"animal" and** "emotional" nature**s** can be rather easily remedied. In contrast, what a feminist theory of oppression simply cannot do without, Hay maintains, are Kant's ideas of respect for others and for oneself. She proposes that the Kantian idea of self-respect gives "Kantianism . . . a way to explain what is wrong with . . . harms" like stereotype threat and adaptive preferences (73). Hay argues persuasively that harms such as these reveal how oppression can undermine women's self-respect, which is also why the Kantian duty of self-respect must be given a central role in a critique of women's duty to resist oppression. Her conclusion in chapter 2 is that Kant and feminists need each other: Kant's theory needs to get rid of its sexism as well as to incorporate more fully, at least, core feminist insights regarding our animal and emotional natures. Feminist theory needs to incorporate Kant's theory of respect, including self-respect, in its account of the duty to resist oppression.

### Contention

#### [1] Removing restrictions protects freedom—restrictions in the status quo prevent people from acting on their agency no matter how miniscule the restrictions is.

Lambert 16 (Saber, writer @ being libertarian, “The Degradation of Free Speech and Personal Liberty,” April 9, 2016, https://beinglibertarian.com/the-degradation-of-free-speech-and-personal-liberty)

Many individuals in society claim that they live in a free nation full of individual liberties. North American constitutions such as the ones implemented in the United States and Canada allow for freedom of speech. However, it is evident that the government has implemented and enforced policies to the contrary. There are a plethora of entertainment programs that have strict censorship policies that go against freedom of speech as it disallows, for example, television producers and musicians to use words or phrases that may be offensive directly or indirectly to a person or group. Regardless, if it is possibly offensive to one or many, the U.S. and Canadian constitutions allow for individuals to say very controversial things. However, restricting one’s freedom of speech in the form of censorship greatly impacts the exchange of ideas that are said to contribute to the (possibly) improvement of society. It is not up to the government to decide what individuals choose to say, read, or hear, and it should not be up to the government to decide what is acceptable within society. The Federal Communications Commission (FCC) in the United States controls all forms of television broadcasting and claims “it is a violation of federal law to air obscene programming at any time. It is also a violation of federal law to air indecent programming or profane language during certain hours.” It is quite clear that censorship by institutional power is a way to control a society in the sense that it determines what individuals in society can legally say, hear, or read. It is against the majoritarian virtues and values that are constitutionally instilled within a society, and is often paralleled to a form of dictatorship – no matter how miniscule.

#### Impacts:

#### [A] Restricting speech undermines freedom of expression which is an external freedom that also prevents others from violating your rightful honor—no one has a right against you to get you to agree to something.

#### [B] Free expression is necessary to hold officials in check and ensure the state respects freedom—laws are only legitimate if one could impose them on oneself—this prohibits enforcing silence.

Ripstein 9 [Ripstein, Arthur (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge: Harvard University Press, 2009, Print. // WWXR]

Innate right has the further implication that a people could not give themselves laws that are so open-ended that they effectively confer an unrestricted power on officials. A rule that created a broad set of presiden- tial or royal prerogatives, to be used for whatever purpose the president or monarch chose, would be inconsistent with self-rule; a provision enti- tling the majority to impose bills of attainder regulating the conduct only of specific individuals would face the same problem. So, too, would a rule that instructed officials to make determinations on the basis of facts that they were not in a position to ascertain.50 The same analysis captures the difficulties of rules that grant discretion to juries to distribute punish- ments on the basis of extralegal factors. Persons concerned with their right of self-mastery could not find themselves under a law that made punishment depend on such factors, even if, in the abstract, they might expect a reasonable prospect of being advantaged by consideration of those factors.51 Other restrictions on the means that the state may use are imposed by the public structure of lawgiving, and the correlative requirement that citizens could not bind themselves to a condition of passivity. The defects of a binding religious creed provide one example. Restrictions on public political expression provide another. Free beings could not put them- selves in a position in which they were prohibited from expressing their concerns about the rightfulness or even prudence of public laws.52 Con- versely, public officials may not deceive citizens.53 These restrictions on the exercise of state power are indirect requirements of rightful honor. To be passive because of disposition or even circumstances is consistent with rightful honor; you are under no obligation of right to exercise your rights, but rightful honor does not permit you to put yourself into an en- forceable condition of passivity. A law prohibiting you from speaking your mind about public issues, or one that granted officials the right to deceive you, would make a condition of passivity enforceable against you.54 Kant condemns a state in which “subjects . . . are constrained to behave only passively” as “the greatest despotism thinkable (a constitu- tion that abrogates all the freedom of its subjects, who in that case have no rights at all).”55 The idea that the people are the authors of the laws that bind them is thus a formal rather than material idea. A material principle would insist that people have a particularly strong or even overriding interest in their innate right, and so would never agree to something likely to compromise it. Kant’s formal principle focuses on the relation between innate right and legislation through the mediating idea of the authorization of coer- cion. The use of force is only rightful provided that it is consistent with the innate right of humanity; positive legislation is only legitimate if it could be a law that free persons could impose on themselves, where the test of the possible imposition is their rightful capacity to bind them- selves, that is, consistency with their rightful honor.

#### [C] It’s impossible to control someone’s thoughts and words are just expressions of thoughts so banning speech is contradictory and self-defeating—ought implies can means affirm independently since the concept of an obligation contains its possibility of fulfillment—can’t implies oughtn’t.

#### [D] Proves squo contradicts the constitution. Links to the standard—2 warrants—the constitution defines the form of the gov’t so actions violating it are contradictory. Also, the Constitution is the expression of our society’s idea of the original contract—it codifies the citizenry as authoritative.

Ripstein [Ripstein, Arthur (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge: Harvard University Press, 2009, Print. // WWXR]

The idea of the original contract extends the strategy of considering the pure case to public institutions charged with making arrangements for people, by articulating the structure through which the power to make and enforce those arrangements can be consistent with freedom, and so fully legitimate. We saw in the previous section that institutions can create an omnilateral will because they incorporate the distinction between the mandate of an office and the purposes of the particular person filling it. An official acting within his or her mandate will often have room to exercise judgment in determining what it requires in a particular situation, or how best to carry out its purposes. In so doing, the official will both exercise judgment and take account of empirical and anthropological factors that might be relevant to those purposes. Any such judgment, discretion, or consideration of facts has to be exercised within the terms of the mandate; an official is not entitled to use public office to pursue private purposes, nor to make the world better in ways unrelated to his or her mandate. That is the sense in which officials are public servants: they act on behalf of the public. We also saw that the entitlement to make arrangements for others is limited to the arrangements that those others would have been entitled, as a matter of right, to make for themselves. The structure of making arrangements that others could have made for themselves includes not only the particular laws that the state makes, but also the “constitutional” law that creates the institutional structure through which some make arrangements for others. The postulate of public right entitles officials to make arrangements for citizens; the idea of the original con- tract represents citizens themselves as authors of the higher-order arrangement empowering those officials, so that all political power is exercised by the people themselves. The ideal case serves as a standard because it provides the only consistent way of organizing the use of power to guarantee everyone’s freedom under law. Institutions and their officials have a duty of right to act in conformity with it because they have a duty of right to act in conformity with every human being’s right to freedom. Kant’s argument does not say that since officials are making law, they should do the ideal version of lawmaking, or that in making law they are already committing themselves to some aspirational ideal of law. Such an approach is foreign to the Kantian project. The suggestion that the duty to rule in conformity with the idea of the original contract is a special case of a more general principle that requires you to do whatever you are doing in accordance with the standard internal to whatever you happen to be doing—as someone might imagine that the problem with making bad arguments is that person’s failure to live up to the proper standards internal to argumentation, and so to somehow ensnare herself in some form of performative contradiction—would fault the person who failed to live up to the ideal with some sort of nonrelational, self-regarding failure of rational consistency, rather than a wrong against others. A state that makes laws inconsistent with the idea of the original contract is defective because it creates a condition that is not rightful, not because it violates a norm of inner consistency.

#### This outweighs—no hindering a hindrance since arguments aren’t intrinsically harmful.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 (“Reply to My Critic(s),” *Criticism*, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 289)

Probyn's piece is a mixture of affective fallacy, argument by authority, and bald ad hominem. There's a pattern here: precisely the tendency to personalize argument and to foreground what Wendy Brown has called "states of injury." Probyn says, for example, that she "felt ostracized by the book's content and style." Ostracized? Argument here is seen as directly harming persons, and this is precisely the state of affairs to which I object. Argument is not injurious to persons. Policies are injurious to persons and institutionalized practices can alienate and exclude. But argument itself is not directly harmful; once one says it is, one is very close to a logic of censorship. The most productive thing to do in an open academic culture (and in societies that aspire to freedom and democracy) when you encounter a book or an argument that you disagree with is to produce a response or a book that states your disagreement. But to assert that the book itself directly harms you is tantamount to saying that you do not believe in argument or in the free exchange of ideas, that your claim to injury somehow damns your opponent's ideas.

#### Only my framework explains the proper role of education and the state’s continual process of self-perfection—controls the internal link to education arguments. A rightful condition mandates public education to maintain the people as authoritative.

Ripstein [Ripstein, Arthur (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge: Harvard University Press, 2009, Print. // WWXR]

Within Kant’s framework, the rationale for such programs is different, but both more familiar and more compelling. Education is both an effective means of achieving some basic public purposes, although in principle a contingent one, and also, at the same time, a necessary means of a rightful condition perfecting itself. It is thus required both by a principle of politics, based on empirical features of the human situation and by a principle of right. A principle of politics designed to give effect to the princi- ple of right in a specific society can embrace publicly funded education on two distinct grounds. First of all, an educated population provides advance protection against poverty and the dependence it creates. Publicly funded universal education is an investment in preventing future individual dependence. Second, the state’s ability to maintain itself also depends on its maintenance of its own material conditions. Those conditions are varied, but include protecting it “both internally and against external enemies,”38 and so providing education needed to strengthen and stabilize the economy. (The same rationale could also provide a further ground for public provision of health care, on the ground of its long-term stabilizing effects.) The state also requires an educated population to fill out the narrower aspects of its mandate. Its ability to resolve disputes depends upon private persons trained in the law; its ability to manage the economy so as to sustain itself as a rightful condition depends upon private persons with requisite skills and abilities to develop novel opportunities, and, where necessary, to adapt to change. Publicly funded education can also be justified more directly in principles of right, both at the level of rights as between private persons and at the level of public right considered more generally. As we saw in Chapter 7, a condition of public right includes your right to speak in your own name, including the right to address not only those near you but the public. Others do not need to pay attention to you, but they must be the ones who decide for themselves whether to pay attention. Further, every citizen must be able to stand on his or her rights, both against other private persons and against the state. Each of these aspects of a rightful condition demands both literacy and civic education.39 Details of the implementation of this requirement depend on empirical and anthropological factors. The idea of the original contract provides a further rationale. Education is the principal means through which a rightful condition can bring itself more nearly into conformity with the idea of the original contract, through which the people more fully give laws to themselves. Even if relations between private persons could be rightful under a despotic system of government, the form through which the laws are given to them is defective against the standard of the idea of the original contract. A fully republican system of government sees to it that the people rules itself, and taxes itself, through its representatives, but this in turn requires reflective citizens and voters, capable of accessing proposed laws and candidates for public office. Kant remarks that the duty to “make the kind of govern- ment suited to the idea of the original contract” can only be discharged in accordance with concepts of right. As a result, even improvements from that perspective must be self-imposed. A change in a state’s constitution “cannot consist in the state’s reorganizing itself . . . as if it rested on the sovereign’s free choice and discretion which kind of constitution it would subject the people to.” Such a mode of change “could still do the people a wrong.”40 Constitutional change from above seeks to enable the people to rule themselves by depriving them of the ability to do so. The only way that a rightful condition can improve itself is by cultivating educated and reflective citizens, which is just to say that it can only do so through education. None of this is to say that public education guarantees reflective voters and citizens; the Kantian claim is only that the only way that the process of the state bringing itself into conformity with concepts of right can be done in accordance with those very concepts is through an educated population that imposes laws on itself. A theory of the legitimate uses of state power cannot guarantee that the uses of those powers will in every instance bring a state more nearly into conformity with right, any more than it can guarantee that legitimate uses of public power will be prudent ones. For each of these reasons, the state has an interest in seeing to it that its citizens are educated. Like any other legitimate state purpose, public education is an instance of mandatory social cooperation, to which all can be required to contribute. We saw in the last chapter that the basic principle of public provision is that in cases of mandatory cooperation in sustaining a rightful condition, the state must see to it that burdens fall equally. Where cooperation is mandatory, people cannot negotiate specific terms, because none can withdraw from the agreement. In such situations, the only terms to which all could agree are ones that place the burdens of co-operation equally. Applied to the case of education, the legislature alone is competent to determine how exactly to characterize the requisite burdens and corresponding benefits, as well as how to interpret its mandate for equal distribution. These matters are obviously controversial in any particular case. At the same time, the state cannot provide education only to the children of educated parents, even if that would be more efficient. Public provision must satisfy the condition of formal equality of opportunity. Formal equality of opportunity in publicly provided education means education for all. This rationale for public education provides a further instance of the powers of a public authority, which entitle it to place requirements and regulations on private citizens. Parents can be compelled to send their children to school; citizens can be required to pay taxes to support educational institutions. Kant thus has the conceptual resources to explain why public provi- sion of the means to full participation in society is both a legitimate state interest and, just as importantly, something that must be provided equally. He can do so without importing any assumption that the state must act in ways that will bring about some state of affairs that can be characterized as desirable apart from it, and without attributing to the state any right or duty to make its citizens happy. Its only duty is to protect their freedom.

#### Hindering a hindrance requires a hierarchy of rights and doesn’t collapse to consequentialism.

Ripstein 9 (Arthur, Professor of Law and Philosophy at the University of Toronto, and Chair of the Department of Philosophy, “Force and Freedom”, Harvard University Press, 2009//[LADI](http://www.theladi.org/evidence))

If you violate a duty of right, however, others are entitled to hinder your hindrance to freedom. This hindrance is not a strategic attempt to reduce the number of violations; it is simply the underlying right reasserting itself in a system in which choices reciprocally limit each other in accordance with universal law. If I invade the space you occupy, you can push me away. If I take what is yours, I must give it back, for no other reason than that it is yours. As Kant observes, if another person “has wronged me and I have a right to demand compensation from him, by this I will still only preserve what is mine undiminished.”53 Compelling someone to give me something so as to “preserve what is mine undiminished” cancels the wrong, leaving my external person and means intact. The initial wrong hinders my freedom by depriving me of powers with which I was able to set and pursue my purposes. The remedial force that is exercised in ex- acting payment cancels the initial, wrongful force, thus “hindering a hin- drance” to freedom. The form of the hindering of the hindrance—the matching of the remedy to the wrong, to make it as if the wrong had not occurred—can be shown a priori. Its matter in any particular case—the value of the thing I deprived you of, for example—requires a judgment about empirical particulars, which must be made in accordance with rational concepts, but is not exhausted by them.

#### Hindering a hindrance requires an external account of entitled freedoms. Only the Constitution solves since it’s the document which defines the form of our social contract.

Valentini 12 Laura Valentini, “Kant, Ripstein and the Circle of Freedom: a Critical Note,” European Journal of Philosophy, 2012.

As **Ripstein puts it, a system where all have freedom as independence ‘is one in which each person is free to use his or her powers, individually or cooperatively, to set his or her own purposes, and no one is allowed to compel others to use their powers in a way designed to advance or accommodate any other person’s purposes’**. But how are we to determine what one’s powers and purposes are? **Certainly not by looking at their actual powers and purposes.** To be sure, **when policemen stop a thief**, they prevent him from using his (positive, as opposed to normative) powers for his (positive) purposes, yet thief’s right to freedom. **This is** paradigmatically **a legitimate intervention, aimed at ‘hindering a hindrance to freedom’** (i.e., the freedom of the victim, whose means would serve someone else’s, the thief’s, purposes).

**The freedom** referred to in the expression ‘hindering a hindrance to freedom’ cannot be any freedom, but **must be the freedom one is entitled to on grounds of justice. Until we have an independent account of justice, then, we cannot know whether someone is free or unfree. Unless we know what is ours, we cannot know whether constraints** on our de facto agency **are violations of our independence** or consistent with it.

### UV

#### [1] Banning speech drives the root cause underground and leads to more virulent bigotry

ACLU 16 American Civil Liberties Union, “Hate Speech on Campus.” Accessed 3 December 2016. https://www.aclu.org/other/hate-speech-campus, WWLD

**Bigoted speech is** symptomatic of a huge problem in our country; it is **not the problem itself**. **Everybody**, when they come to college, **brings** with them **the values, biases and assumptions they learned while growing up in society,** so **it's unrealistic to think that punishing speech is going to rid campuses of the attitudes that gave rise to the speech in the first place**. **Banning bigoted speech won't end bigotry**, even if it might chill some of the crudest expressions. **The mindset that produced the speech** lives on and **may even reassert itself in more virulent forms. Speech codes, by simply** **deterring students from saying out loud what they will continue to think in private, merely drive biases underground where they can't be addressed.** In 1990, when Brown University expelled a student for shouting racist epithets one night on the campus, the institution accomplished nothing in the way of exposing the bankruptcy of racist ideas.

#### [2] Speech codes empower white majorities to silence minorities

ACLU 16: American Civil Liberties Union, “Hate Speech on Campus.” Accessed 3 December 2016. <https://www.aclu.org/other/hate-speech-campus>, WWLD

Historically, defamation **laws or codes have proven ineffective at best and counter-productive at worst. For one thing, depending on how they're interpreted and enforced, they can actually work against the interests of the people they were ostensibly created to protect. Why? Because the ultimate power to decide what speech is offensive and to whom rests with the authorities -- the government or a college administration -- not with those who are the alleged victims** of hate speech. In Great Britain, for example, a[n] Racial Relations Act was adopted in 1965 to outlaw racist defamation. But throughout its existence, the Act has largely been used to persecute activists of color, trade unionists and anti-nuclear protesters, while the racists -- often white members of Parliament -- have gone unpunished. Similarly, **under a speech code in effect at the University of Michigan for 18 months, white students in 20 cases charged black students with offensive speech. One of the cases resulted in the punishment of a black student for using the term "white trash"** in conversation with a white student. The code was struck down as unconstitutional in 1989 and, to date, the ACLU has brought successful legal challenges against speech codes at the Universities of Connecticut, Michigan and Wisconsin. These examples demonstrate that speech codes don't really serve the interests of persecuted groups. The First Amendment does. **As one African American educator observed: "I have always felt as a minority person that we have to protect the rights of all because if we infringe on the rights of any persons, we'll be next.”**

#### [3] Free expression is key to civil rights movements for racial minorities, women, and LGBT folks – campuses are key

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

Down and Cowan (2012) note that Americans who notice the importance of **free expression** believe, it benefits more than just the oppressor, but **aids in the advancement of the minority group.** **For example, historical movements such as the civil rights movement, the women's movement, and the gay liberation movement were advanced due to freedom of speech, expression, and ideas** (Down & Cowan, 2012). **This advancement has granted many minority groups the ability to experience various prohibited privileges such as, the right to attain an equal education. As campuses strive to become more inclusive and respectful communities there is a critical need to identify the spaces and ways in which students feel free to express themselves and their views**.

#### [4] Strong First Amendment protections are key to dissenting voices in academia – feminism, CRT, and anti-Islamophobia are reliant on it

Bernstein ’03

(David E. Bernstein is a professor of Law at George Mason University, 2003, “Defending the First Amendment from Antidiscrimination Laws”, <http://ssrn.com/abstract_id=489063)>//SJT

Ironically, protecting freedom of expression from government regulation ultimately will benefit left-wing scholars who support censorship, such as radical feminists and critical race theorists, as much as anyone. These scholars advocate speech regulations while living primarily in the very left-wing academic world, where their views are only marginally out of the mainstream. **Yet, if the First Amendment is weakened sufficiently by antidiscrimination law that the government gains the power to suppress speech more broadly, feminists and critical race theorists, as holders of views wildly at variance to those of the public at large, are likely to be among the first victims**. [FN125] That leftists writing in a society that has long been and continues to be hostile to their ideology [FN126] would want to weaken the principle that government may not suppress expression because of hostility to its viewpoint seems counterintuitive, to say the least. Indeed, many critical race scholars and feminists argue that America is innately and irredeemably racist and sexist. [FN127] One need not accept this vision to realize that the Critical Race and Radical Feminist Party, if such a thing existed, would not exactly sweep the American electorate anytime soon. [FN128] **Because many critical race theorists and feminists claim to believe that America is so hostile to their values, they should find constitutional protections against the majority [are] especially meaningful.** Indeed, if left-wing professors wish to preserve their own academic freedom, they will need to learn to be more tolerant of those whose speech they currently seek to suppress. For the last several decades, pressure to censor free speech on university campuses has come primarily from the left. **The current war against terrorism, and the frequent dissent within the academy to that war, has shifted the dynamic, putting many radical professors on the defensive. The First Amendment, and the values of academic freedom that it has fostered, will protect the vast majority of dissenters**, but only because the radical's war against the First Amendment has as yet been largely unsuccessful. Of course, left-wing censors imagine a world in which the government silences only their ideological enemies, and they advocate censorship as an integral part of a much broader scheme for reconstructing society along egalitarian lines. Yet, it should be a cardinal principle of political advocacy that one should not support granting the government regulatory powers that one would not want applied to oneself. This principle would not only reduce hypocrisy, but also remind political activists that politics is unpredictable, driven by power rather than morality. **Power given to government is often unexpectedly ultimately used against those who advocated that the power be exercised against others**. As William Graham Sumner remarked many years ago: The advocate of [government] interference takes it for granted that he and his asociates will have the administration of their legislative device in their own hands. . . . They never appear to remember that the device, when once set up, will itself be the prize of a struggle; that it will serve one set of purposes as well as another, so that after all the only serious question is: who will get it?" [FN129] This is a lesson that academic advocates of censorship would do well to learn.

#### [5] Hate speech statutes are compatible with the aff

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**In Beauharnais, the Court upheld the constitutionality of a group libel statute that rendered it actionable to "portray[] depravity, criminality . .. or lack of virtue of a class of citizens, of any race, color, creed, or religion" and to expose those citizens to "contempt, derision, or obloquy."**' 02 **The majority found that, given Illinois's history of racial friction, its legislature could enact legislation to punish the dissemination of demeaning messages, such as those opposed to neighborhood integration, because those messages threatened "the peace and well-being of the State."** 03 The opinion conceived of government playing a role in establishing a standard of decency designed to prevent intergroup friction.

# EDIT

## rewritten contention

Never broken, was intended for CRLS OS to be able to read in finals of TOC if he affirmed. It has a very different structure from the other contention and probably would have required some framework switch-ups. The idea of the contention was to filter offense down to one Kantian principle – promise-keeping – and to enable the aff to hijack lots of different frameworks to reset in the 1AR.

#### [1] Public universities are contractually bound by the First Amendment to not restrict Constitutionally protected speech. But mission statements are promises that also generate binding juridical duties to not restrict CPS. Private colleges prove.

DeWulf 16 [DeWulf, Kaitlin. “A promise unkept.” *Student Press Law Center*. 12/16/16 [http://www.splc.org/article/2016/12/a-promise-unkept //](http://www.splc.org/article/2016/12/a-promise-unkept%20//) WWXR]

Acting as an arm of the government, public universities are constrained by the First Amendment and must protect students’ right to free expression and free speech. A private university, legally considered to be an “expressive association” with the right to express its own institutional views, can control its own message through various measures. Lately, those measures have included disciplining students for controversial or offensive speech or excluding speakers with opposing views from campus. Since 2000, a growing number of “disinvitation” movements have occurred by students and faculty on private campuses to disinvite controversial speakers such as former Secretary of State Condoleezza Rice and retired neurosurgeon Ben Carson. Just this year, students at Scripps College – a private liberal-arts women’s college in California — are putting pressure on administrators to disinvite Madeleine Albright, the first female secretary of state, from speaking at commencement because she is a “white feminist” and “repeat genocide enabler.” While disinvitation protests happen at both private and public universities, nearly 65 percent of reported incidents have occurred at secular or religious private institutions, according to the Foundation for Individual Rights in Education. These incidents are usually in response to the speakers’ beliefs or actions, such as an anti-abortion voting history or vocal opposition of Islam. Though a private college may be able to disinvite certain speakers because of its freedom to disassociate certain views from the institution, some say that this is a sign of a larger problem – that when a university makes promises to students and faculty through a code of conduct or pledges to prospective students, it creates a binding contract that, in more and more cases, is being broken. A CONTRACTUAL RELATIONSHIP With the ability to place any set of moral, philosophical or religious teaching above a commitment to free expression, private universities have much more leeway in written codes. But many choose to promote their institutions as places where free speech is esteemed and protected – a promise, lawyers say, they are contractually bound to uphold when codified. “Where a private college or university impliedly agrees to provide educational opportunity and confer the appropriate degree in consideration for a student’s agreement to successfully complete degree requirements, abide by university guidelines, and pay tuition, a contact exists.” U.S. District Judge Karen Angelini wrote in her 1998 opinion in Southwell v. University of the Incarnate Word. In the case, an Incarnate Word nursing student argued a breach of contract by the university for her failure in obtaining a degree on time because a clinical instructor did not pass her in the practical component of a course. The judge ruled in favor of the university, but set a precedent of a contract between students and a private institution. Adam Goldstein, attorney advocate for the Student Press Law Center, said a relationship between a university and a student contains the three elements of a contract: offer, acceptance and consideration, which involves a payment of money – tuition checks. “The statements a private university makes are part of what you’re buying when you pay your tuition,” Goldstein said. “You should get the value of what you paid for or you should get your money back, period.” Under the legal principle “promissory estoppel,” if one party reasonably relies on the promises and representations of the other, and then the other reneges, the injured party is entitled to compensation to the extent of his or her reasonable reliance.

#### And these codes are common – Florida State proves.

FSU 17 [Florida State University. Mission Statement. 2017. http://floridastateuniversity.myuvn.com/mission-statement-creed/]

EXCELLENCE I will pursue excellence in my learning and living in the university and beyond. FREEDOM OF SPEECH AND INQUIRY I will support academic freedom, including the right of dissent and freedom of speech.

#### Impacts:

#### [A] Promises are a special right that arise through transactions between related agents. And agents are defined relationally – saying person x is a sister is just simplifying that x is a sister to y. Only fulfilling promises maintains the proper relation between persons.

Hart 55 [Hart, H. L. A. (famous philosopher). “Are There Any Natural Rights?” *The Philosophical Review*, Vol. 64, No. 2 (Apr., 1955), pp. 175 – 191 <http://isites.harvard.edu/fs/docs/icb.topic97122.files/Hart.pdf> // WWXR]

A) Special rights: When rights arise out of special transactions between individuals or out of some special relationship in which they stand to each other, both the persons who have the right and those who have the corresponding obligation are limited to the parties to the special transaction or relationship. I call such rights special rights to distinguish them from those moral rights which are thought of as rights against (ie, as imposing obligations upon) everyone, such as those that are asserted when some unjustified interference is made or threatened as in (B) above. (i) The most obvious cases of special rights are those that arise from promises. By promising to do or not to do something we voluntarily incur obligations and create or confer rights on those to whom we promise; we alter the existing moral independence of the parties’ freedom of choice in relation to some action and create a new moral relationship between them, so that it becomes morally legitimate for the person to whom the promise is given to determine how the promisor shall act. The promisee has a temporary authority or sovereignty in relation to some specific matter over the other’s will which we express by saying the promisor is under an obligation to the promisee to do what he has promised. To some philosophers the notion that moral phenomena – rights and duties or obligations – can be brought into existence by the voluntary action of individuals has appeared utterly mysterious; but this I think has been so because they have not clearly seen how special the moral notions of a right and an obligation are, nor how peculiarly they are connected with the distribution of freedom of choice; it would indeed be mysterious if we could make actions morally good or bad by voluntary choice. The simplest case of promising illustrates two points characteristic of all special rights (1) the right and obligation arise not because the promised action has itself any moral quality, but just because of the voluntary transaction between the parties; (2) the identity of the parties concerned is vital- only *this* person (the promisee) has the moral justification for determining how the promisor shall act. It is *his* right; only in relation to him is the promisor’s freedom of choice diminished, so that if he chooses to release the promisor no one else can complain.

#### [B] Upholding promises is the most intuitive moral duty – especially in legal contexts. Promises are also key to social cooperation. Intuitions are important to other frameworks – they motivate agents to follow and are moral data to check principles.

Habib 14 [Habib, Allen, "Promises", The Stanford Encyclopedia of Philosophy (Spring 2014 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/spr2014/entries/promises/>. // WWXR]

Few moral judgments are more intuitively obvious and more widely shared than that promises ought to be kept. It is in part this fixed place in our intuitive judgments that makes promises of particular interest to philosophers, as well as a host of social scientists and other theorists. Another feature of promises that make them a topic of philosophical concern is their role in producing trust, and by so doing facilitating social coordination and cooperation. For this reason promises and related phenomena, such as vows, oaths, pledges, contracts, treaties and agreements more generally are important elements of justice and the law, and, at least in the Social Contract tradition, of the political order as well. Promises are of special interest to ethical theorists, as they are commonly taken to impose moral obligations.

#### [C] Promising is an institutionalized practice of agreement making. And practices are both constitutive and explanatory – they impose norms on agents of a particular class, like laws on citizens, and also explain how agents are initiated into that class, for instance via naturalization procedures. Explaining initiation is key to rendering the obligation binding – otherwise the agent’s adherence would be accidental. So promises first.

Scanlon 90 [Scanlon, Thomas (big-eared philosopher). “Promises and Practices.” *Philosophy & Public Affairs* Vol. 19, No. 3 (Summer, 1990), pp. 199-226 // WWXR]

Many have argued that the wrong involved in breaking a promise is a wrong that depends essentially on the existence of a social practice of agreement-making. Hume, maintained that fidelity to promises is "an artificial virtue," and different versions of this claim have been advanced in our own day by Rawls2 and others. In their view, the analysis of the obligation arising from a promise is a two-stage affair. First, there is the social practice, which consists in the fact that a given group of people generally behave in a certain way, have certain expectations and intentions, and accept certain principles as norms. Second, there is a moral judgment to the effect that, given these social facts, a certain form of behavior (is possible and) is morally wrong. In Hume's case this second stage takes the form of a reaction of impartial disapproval when we consider acts of promise-breaking, a reaction that reflects our recognition that the institution of promising is in everyone's interest. Rawls, on the other hand, invokes what he calls the [or a] Principle of Fairness: If you have voluntarily helped yourself to the benefits of a just social practice, then you are obligated to do your part in turn as the rules of that practice specify. This is a general moral principle, meant to capture the wrong involved in many forms of free-riding. Its application to the case of promises is as follows. Promising is a just social practice that provides us with the good of being able to make stable agreements. One of its central rules provides that a person who says "I promise to..." under appropriate conditions is to do the thing described. A person who makes a promise helps himself to the good that the practice provides. According to the Principle of Fairness, then, he is obligated to comply with the rules of the practice, hence to keep his promise.

#### [2] The Constitution defines the form of the government so CPS cannot be restricted by any public body—it’s logically contradictory. Outweighs since the neg can’t be thought.

Ripstein 9 [Ripstein, Arthur (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge: Harvard University Press, 2009, Print. // WWXR]

The idea of the original contract extends the strategy of considering the pure case to public institutions charged with making arrangements for people, by articulating the structure through which the power to make and enforce those arrangements can be consistent with freedom, and so fully legitimate. We saw in the previous section that institutions can create an omnilateral will because they incorporate the distinction between the mandate of an office and the purposes of the particular person filling it. An official acting within his or her mandate will often have room to exercise judgment in determining what it requires in a particular situation, or how best to carry out its purposes. In so doing, the official will both exercise judgment and take account of empirical and anthropological factors that might be relevant to those purposes. Any such judgment, discretion, or consideration of facts has to be exercised within the terms of the mandate; an official is not entitled to use public office to pursue private purposes, nor to make the world better in ways unrelated to his or her mandate. That is the sense in which officials are public servants: they act on behalf of the public. We also saw that the entitlement to make arrangements for others is limited to the arrangements that those others would have been entitled, as a matter of right, to make for themselves. The structure of making arrangements that others could have made for themselves includes not only the particular laws that the state makes, but also the “constitutional” law that creates the institutional structure through which some make arrangements for others. The postulate of public right entitles officials to make arrangements for citizens; the idea of the original con- tract represents citizens themselves as authors of the higher-order arrangement empowering those officials, so that all political power is exercised by the people themselves.

#### [3] It’s a violation of inner freedom – ability to think as one wishes – to restrict one’s speech since speech is just an extension of thought. And no restrictions are justified – universities must allow themselves to speak freely. And restrictions are impossible – ought implies can affirms since via contraposition can’t implies ought not.

Spinoza 70 [Spinoza, Baruch (Dutch philosopher). *Theological-Political Treatise*. Trans. Michael Silverthorne and Jonathan Israel (Institute for Advanced Study, Princeton). Cambridge: Cambridge UP, 2007. First published 1670. P. 251 // WWXR]

[3] However much therefore sovereign authorities are believed to have a right to all things and to be the interpreters of right and piety, they will never be able to ensure that people will not use their own minds to judge about any matter whatever and that, to that extent, they will not be affected by one passion or another. It is indeed true that they can by natural right regard as enemies everyone who does not think absolutely as they do in all things, but we have moved on from arguing about right, and are now discussing what is beneficial. So while conceding that they may by natural right employ a high degree of violence in governing, and arrest citizens or liquidate them for the most trivial reasons, nevertheless everyone will agree that this is not consistent with the criteria of sound reason. Indeed, rulers cannot do such things without great risk to their whole government, and hence we can also deny that they have absolute power to do these and similar things and consequently that they possess any complete right to do them. For as we have proved, the right of sovereign authorities is limited by their power. [4] No one, therefore, can surrender their freedom to judge and to think as they wish and everyone, by the supreme right of nature, remains master of their own thoughts. It follows that a state can never succeed very far in attempting to force people to speak as the sovereign power commands, since people’s opinions are so various and so contradictory. For not even the most consummate statesmen, let alone the common people, possess the gift of silence. It is a universal failing in people that they communicate their thoughts to others, however much they should [sometimes] keep quiet. Hence, a government which denies each person freedom to speak and to communicate what they think, will be a very violent government whereas a state where everyone is conceded this freedom will be moderate.

## extensions

### a priori

#### EXTEND the analytic above Ripstein—the neg can’t be thought—it’s logically contradictory for an agent bound by the Constitution to contravene it—affirm on face.

#### EXTEND Spinoza 70—it’s game over—it’s impossible to restrict speech since speech just is an extension of thought and thought is always free. Even if it’s a bad argument it was dropped so it comes first. Extend ought implies can justifies voting aff irrespective of the rest of the flow—if you can’t do something, you oughtn’t do it.

### a2 consequentialisms

[omitted]

### a2 kant turns

[omitted]

#### No hindering a hindrance since arguments aren’t intrinsically harmful.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 (“Reply to My Critic(s),” *Criticism*, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 289)

Probyn's piece is a mixture of affective fallacy, argument by authority, and bald ad hominem. There's a pattern here: precisely the tendency to personalize argument and to foreground what Wendy Brown has called "states of injury." Probyn says, for example, that she "felt ostracized by the book's content and style." Ostracized? Argument here is seen as directly harming persons, and this is precisely the state of affairs to which I object. Argument is not injurious to persons. Policies are injurious to persons and institutionalized practices can alienate and exclude. But argument itself is not directly harmful; once one says it is, one is very close to a logic of censorship. The most productive thing to do in an open academic culture (and in societies that aspire to freedom and democracy) when you encounter a book or an argument that you disagree with is to produce a response or a book that states your disagreement. But to assert that the book itself directly harms you is tantamount to saying that you do not believe in argument or in the free exchange of ideas, that your claim to injury somehow damns your opponent's ideas.

#### At worst the state is only entitled to hinder direct hindrances of freedom. (1) you can’t coerce someone to stop bad consequences down the line – the only way your restriction is consistent with freedom is if it stops an act that isn’t an exercise of freedom, so the direct object of your coercion must itself be a violation of freedom, (2) the state can step in to hinder a violation of freedom only if the causal chain joining action and injury doesn’t flow through the actions of a third party. Rights are bilateral relations between agents, so rights violations can only involve a connection between two parties.

Weinrib 95 [Ernest Weinrib (Prof. of Law, University of Toronto). *The Idea of Private Law* (Harvard: Cambridge, 1995) 125. // WWXR]  
Understood as an articulated unity, **the correlativity of right and duty** normatively **spans** the sequence **from act to injury**, thereby **establishing the moral nexus between a specific plaintiff and a specific defendant**. The **correlative gains and losses of corrective justice compare what** the parties **have with what they ought to** have under a Kantian regime of rights and corresponding duties. **The defendant realizes a** normative **gain through action that violates a duty correlative to the** plaintiff’s **right**; liability causes the disgorgement of the gain

### a2 can’t promise immoral

#### 1. extend Scanlon—promises are a just social practice. It’s not about the particular promise but about the institution of promising. They haven’t indicted the practice of promising, just individual instances. But that doesn’t disprove the general rule—so vote aff, promise keeping is good.

#### 2. no reason this promise is unjust—that’s a necessary link. It’s too late to re-warrant—that arg should’ve been in the 1nc.

#### 3. intuitions are a tiebreaker—extend Habib—err toward promises being good because the majority of moral data confirms.

#### 4. institutions solves—Habib also proves promises are self-correcting via social cooperation.

### a2 “but just a general commitment”

#### 1. practices determine the content of what we mean by a general commitment—that’s the analytic above Scanlon. In our society that’s the Constitution.

2. universities would have to have specified exceptions otherwise err toward protecting all speech—you can’t derive a duty to restrict certain kinds of speech from the universal commitment to protect speech—that’s incoherent. So universities would have to affirm a specific restriction justified by another specific rationale to constitute a promise.

3. rest of aff offense is a tiebreaker.

### a2 silly deonts

[omitted]

1. Helga, Review of Carol Hay’s *Kantianism, Liberalism, and Feminism: Resisting Oppression*. Notre Dame Philosophical Reviews. <http://ndpr.nd.edu/news/44059-kantianism-liberalism-and-feminism-resisting-oppression/> // WWXR [↑](#footnote-ref-1)